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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956

STATES OF WISCONSIN, MINNESOTA, OHIO and PENNSYLVANIA, *Complainants,* vs. STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, *Defendants.*	No. 2 Original
STATE OF MICHIGAN, *Complainant,* vs. STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, et al., *Defendants,* STATES OF MISSOURI, KENTUCKY, TENNESSEE, LOUISIANA, MISSISSIPPI, and ARKANSAS, *Intervening Defendants.*	No. 3 Original
STATE OF NEW YORK, *Complainant,* vs. STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, et al., *Defendants.*	No. 4 Original

PETITION FOR TEMPORARY MODIFICATION OF PARAGRAPH 3 OF DECREE OF APRIL 21, 1930

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PETITION FOR TEMPORARY MODIFICATION OF PARAGRAPH 3 OF DECREE OF APRIL 21, 1930

The State of Illinois seeks the temporary modification hereafter prayed of paragraph 3 of this Court's decree entered on April 21, 1930, in this cause, with respect to the

diversion of water from the Great Lakes-St. Lawrence Watershed into the Mississippi River *via* the Illinois Waterway.

The reason for this motion is that there exists an already urgent and increasingly critical emergency upon the Mississippi River, as a result of which some 200 barges essential to interstate transportation of vital materials on navigable waters are already stalled, the health of many riparian cities and smaller communities upon the river is endangered and other grave harm to national welfare is threatened.

This Court's above mentioned decree restricted withdrawals of water from the Great Lakes-St. Lawrence Watershed into the Mississippi channel to 1500 cubic feet per second in addition to domestic pumpage.

Illinois prays temporary relief permitting the pumpage of 10,000 cubic feet of water per second in addition to domestic pumpage for a period of 100 days, as an aid to navigation on the Mississippi River.

For causes in support of this petition, the State of Illinois represents:

This petition is field under and pursuant to the provisions of Paragraphs 6 and 7 of the decree entered April 21, 1930, which permit application, after due notice, for a modification of said decree if conditions should so warrant.

Due notice has been given to the complainants of the filing of this petition.

The temporary increase in the rate of diversion now set will not adversely affect present lake levels in the Great Lakes-St. Lawrence system or watershed for the reason that the total quantity of water proposed to be diverted is not sufficient materially to affect such levels.

As a result of unprecedented drought conditions in the midwest the quantity and flow of water in the Mississippi

River is fast approaching an all-time low. On October 11, 1956, the discharge of the Mississippi River at St. Louis was 58,000 cubic feet per second which was barely sufficient for navigation. Of these 58,000 cubic feet per second, 35,000 came from the Missouri River, 18,000 came from the Upper Mississippi River and 5,000 came from the Illinois Waterway. Barring unforeseen rains the discharge of the Upper Mississippi is expected to decline to about 12,000 cubic feet per second by December 1, 1956, and the discharge from the Illinois Waterway is expected to decline to 3,500 cubic feet per second by December 1, 1956. Early in November the controlled discharge of the Missouri River will be reduced from 35,000 cubic feet per second to 15,000 cubic feet per second and by December 1, 1956, will be further reduced to about 8,000 cubic feet per second. The expectation is that by December 1, 1956, the discharge at St. Louis will total only 23,000 cubic feet per second. The seriousness of this situation can best be appreciated by comparison with the fact that the lowest rate of discharge previously recorded at St. Louis was 38,000 cubic feet per second, in January, 1940.

It is apparent that when these low stages are reached navigation through the Alton Lock will come to a standstill and navigation between Cairo and Alton and between Alton and LaGrange on the Illinois Waterway will be more seriously handicapped than ever before if not stopped altogether. As a result of this condition, shipping on the Mississippi River and the Illinois Waterway already has been severely curtailed and within a matter of weeks may be halted entirely. Should this occur the State of Illinois will be irreparably injured as a result of curtailment of the commerce which moves to and from this state *via* the Mississippi River which includes such commodities as coal, steel, grain, sulphur, phosphate rock, and other products

which move *via* river barge lines. In addition, even at the time this petition is written many barge loads of fuel oil consigned to destinations in Illinois are stranded below Alton Lock, unable to proceed to their respective destinations. This oil is critically needed both for industrial use and to heat private homes located throughout the State of Illinois during the coming winter months. It is therefore submitted that a state of emergency exists, brought about by natural causes for which the State of Illinois is in no respect responsible, which justifies and require temporary modification of the outstanding decree of this Court to permit diversion of additional water from Lake Michigan for the purpose of improving navagation conditions on the Illinois Waterway and the Mississippi River at the earliest practicable date.

As above indicated, the emergency condition which prompts the filing of this petition already exists and will have reached a crucial stage before the first of December. In the circumstances, if the relief sought herein is to be effective it must be granted without undue delay. To this end the Court is respectfully requested to modify the requirements of Paragraph 5 of Rule 9 of its Rules and to call upon the other parties to this proceeding, i.e., the States of Arkansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, New York, Pennsylvania, Ohio, Tennessee and Wisconsin, to file their reply, if any, to this petition within twenty days of the date of service hereof. In support of this request the attention of the Court is directed to the fact that the instant petition is more analogous to a motion than to an initial pleading and the time modification requested would conform with the practice of the Court in the case of motions as provided in Paragraph 4 of Rule 35.

WHEREFORE, The State of Illinois respectfully petitions that Paragraph 3 of the decree of this Court of April 21, 1930, in this cause, be temporarily modified to permit a

diversion of ten thousand cubic feet of water per second from the Great Lakes-St. Lawrence system or watershed, in addition to domestic pumpage, for a period of one hundred days following the entry of the Court's order authorizing such modification, within which time it is anticipated that the impairment to navigation which now exists on the Mississippi River and the Illinois Waterway can and will be ameliorated.

Respectfully submitted,

STATE OF ILLINOIS
By LATHAM CASTLE,
Attorney General of the State of Illinois

State of Illinois }
Cook County } ss:

The undersigned, being first duly sworn, deposes and says that he is a duly appointed and acting Assistant Attorney General in the State of Illinois; that he has read the foregoing petition; and that the matters and things therein set forth are true in substance and in fact. Deponent further certifies that copies of the foregoing petition have this day been mailed by first class United States mail, or United States airmail, to all parties to this proceeding, such service has been addressed, sufficient postage prepaid, as follows:

Hon. Vernon W. Thomson
Attorney General
State Capitol
Madison, Wisconsin

Hon. J. A. A. Burnquist
Attorney General
State Capitol
St. Paul 1, Minnesota

Hon. C. William O'Neill
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Hon. John M. Dalton
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Hon. Roy H. Beeler
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State Supreme Court Building
Nashville, Tennessee

Hon. John P. Coleman
Attorney General
State Capitol
Jackson, Mississippi

Hon. Nathaniel L. Goldstein
Attorney General
State Capitol
Albany, New York

.....

Subscribed and sworn to before me this ..... day of November, A. D. 1956.

.....
Notary Public

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vs.
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Defendants.
No. 4. Original.

REPLY TO PETITION.

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